

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Henry Baptiste, III)	
)	
Filing Date: August 14, 2017)	Case No.: FIA-17-0027
)	
_____)	

Issued: August 29, 2017

Decision and Order

On August 14, 2017, Henry Baptiste, III (Appellant) appealed a determination received from the Department of Energy's (DOE) Bonneville Power Administration (BPA). BPA responded to a request filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The Appellant challenges the adequacy of BPA's search for responsive documents. As explained below, we have determined that the Appeal should be denied.

I. Background

On March 27, 2017, the Appellant requested:

[Agency records regarding] Fish & Wildlife [i]n the Okanagan River water Basin [including:]

[1] Identifying information on the Upper Columbia River Spring Run Chinook Salmon in the Canadian Section historical water shed and riparian zone[;] and

[2] Records that pertain to the ESU (Evolutionary Significant Unit) agreements and MOU's [Memoranda of Understanding] with the Osoyoos Indian [Tribe] or the Okanagan Nation Alliance[,] and there [*sic*] designation of a [tribal] member to the ESU conservation program or habitat enhancement program of real property acquired by BPA and Confederated Tribes of the Colville Reservation; it was transfer[red] from Colville Tribe to Osoyoos Indian Band in 1988[;] and

[3] A trust that would have transferred with the ESU (Tribal Member) in [19]88[;] and

[4] Records and information on the particulars to be able to acquire the protections and benefits of an Evolutionary Significant Unit[.]

Determination Letter from C.M. Frost, Freedom of Information/Privacy Act Officer, BPA, to Henry Baptiste (July 13, 2017). After seeking clarification from the Appellant, BPA searched several agency offices for responsive records. *Id.* On July 13, 2017, BPA informed the Appellant that it had located no records responsive to his request. *Id.* On August 14, 2017, the Appellant appealed this determination. FOIA Appeal from Henry Baptiste to OHA Filings (August 14, 2017).

II. Analysis

The FOIA requires that a search be reasonable, not exhaustive. “[T]he standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials.” *Miller v. Dep’t of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); *accord Truitt v. Dep’t of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). In cases such as these, “[t]he issue is *not* whether any further documents might conceivably exist but rather whether the government’s search for responsive documents was adequate.” *Perry v. Block*, 684 F.2d 121, 128 (D.C. Cir. 1981) (emphasis in original). We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. *See, e.g., Project on Government Oversight*, Case No. TFA-0489 (2011).¹

We contacted BPA to determine how the search was conducted in this case. In their response, BPA informed OHA that based on the subject matter and the specific nature of the request, the most extensive searches occurred in the Tribal Affairs Office and the Office of General Counsel. Email from Paul Mautner, Office of General Counsel, BPA, to Brooke DuBois, Attorney-Advisor, Office of Hearings and Appeals (OHA) (August 23, 2017). In both offices, BPA conducted both manual and electronic searches of email files, hard drives, and shared drives after determining that this is where responsive records would likely be stored. *Id.* Neither office had paper files relating to the requested information. *Id.* For the electronic search, the search terms used were “Osoyoos,” “Okanagan Nation Alliance,” “ESU Tribal member,” “evolutionary significant unit,” and “Canada Spring Run Chinook Salmon.”² *Id.* Additionally, BPA conducted a supplementary search for responsive records within the Oregon Implementation Fish & Wildlife office using the same search terms. *Id.* No responsive records were located as a result of any of these searches.

III. Conclusion

Based on the foregoing, we find that BPA conducted a search reasonably calculated to uncover the records sought by the Appellant, and that the search was therefore adequate. Thus, we will deny the present Appeal.

¹ Decisions issued by the Office of Hearings and Appeals (OHA) are available on the OHA website located at www.energy.gov/oha.

² During the search, BPA used the search term “Canada Spring Run Chinook Salmon” based on the Subject Matter Expert’s best technical knowledge of which term would be employed in the agency’s files. Email from James King, BPA, to Brooke DuBois, OHA (August 25, 2017). This term refers to the same species of salmon as the “Upper Columbia Spring Run Chinook Salmon” referenced by the Appellant. *Id.*

It Is Therefore Ordered That:

- (1) The Appeal filed on August 14, 2017, by Henry Baptiste, III, Case No. FIA-17-0027, is hereby denied.
- (2) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

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Date: August 29, 2017